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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/599,509

09/29/2006

Udo Heselhaus

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QUINN LAW GROUP, PLLC
39555 ORCHARD HILL PLACE
SUITE # 520
NOVI, MI 48375

EXAMINER

PEDDER, DENNIS H

ART UNIT

PAPER NUMBER

3612

MAIL DATE

DELIVERY MODE

12/31/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/599,509	Applicant(s) HESELHAUS, UDO	
	Examiner Dennis H. Pedder	Art Unit 3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/2/2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 July 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim 1 lacks a clear frame of reference for “rearward portion”, which appears to be redundant to “rearward end”. As for the former, that which is rearward depends on the position of the observer, not on structural limitations.

Claim 4 lacks clear antecedent. The side bracket 14,15 has already been claimed and the function of “can be pivoted” is also already claimed in claim 1.

Claim 5 is incorrect. The flexible roof panel 4 contacts the bracket in figure 4, with the opened roof.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 through 6, 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat No 4,708,389 to Maebayashi et al.

Regarding claim 1, Maebayashi et al. discloses (Fig 4C) a top for a convertible vehicle with a flexible roof panel (15), which is attached to an arrangement of convertible-top rods (13) and, in its rear area, to an attachment device (61,62) of the vehicle body (56), in which a clamping device (31/32), acting on the flexible roof panel in the region of its attachment to the vehicle body in the closed state of the convertible top, is provided, said clamping device being designed with at least one bracket that forces the flexible roof panel in the closed state of the convertible top against an auto-body closure seal (63), characterized in that the at least one bracket is pivotable with its rearward end around an articulation (33 or 9a) attached to the vehicle body via members 32 and 32a and 9 .

As to claim 2, Maebayashi et al. discloses (Fig 2B) the clamping device has a side bracket (32) assigned to each side of the vehicle.

As to claim 3, Maebayashi et al. discloses (Fig 5) a side bracket is movable in such a way between a first position in the stored state of the convertible top and a second position that tightens the flexible roof panel in the closed state of the convertible top, so that the bracket is pivoted upward with its end on the front side of the vehicle against the auto-body closure seal.

As to claim 4, Maebayashi et al. discloses a side bracket is arranged essentially in the longitudinal direction of the vehicle and can be pivoted around the pivot point attached to its rear end and forming an articulation.

As to claim 5, Maebayashi et al. discloses the side bracket in the opened state of

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convertible top is arranged along the floor panel (59). It would lie essentially at the height of the attachment device (61,62) of the flexible roof panel as seen in figure 4C.

As to claim 6, Maebayashi et al. discloses the at least one bracket is designed as an at least roughly U-shaped bracket extending essentially over the width of the vehicle.

As to claim 9, Maebayashi et al. discloses the at least one bracket is attached to a main convertible-top support (9).

As to claim 10, Maebayashi et al. discloses (Fig 4C) the attachment device of the vehicle body has a clamping profile for holding the flexible roof panel.

As to claim 11, Maebayashi et al. shows (Fig 4C) the attachment device of the vehicle body has an at least roughly U-shaped clip (the loop that passes through the bolt 62) essentially spanning the width of the vehicle, to which the flexible roof panel is firmly connected.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maebayashi et al..

As to claim 7 and 8, it is common knowledge for convertible tops to have drive devices (one or more) that are connected to the convertible top linkages.

As applicant has not challenged this statement of judicial notice, it is made final.

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Response to Arguments

5. Applicant's arguments filed 12/2/2008 have been fully considered but they are not persuasive. Please see the detailed action above. Incorrect claim limitations are not conducive to a successful patentable resolution.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis H. Pedder whose telephone number is (571) 272-6667. The examiner can normally be reached on 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn D. Dayoan can be reached on (571) 272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dennis H. Pedder/
Primary Examiner, Art Unit 3612

Dennis H. Pedder
Primary Examiner
Art Unit 3612

DHP
12/14/2008